

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Robert Lee Lassiter,)	
)	C/A No. 9:11-2717-MBS
Petitioner,)	
)	
vs.)	O R D E R
)	
Mildred L. Rivera, Warden, F.C.I. Estill)	
Satellite Camp,)	
)	
Respondent.)	
_____)	

Petitioner Robert Lee Lassiter is an inmate in custody of the Federal Bureau of Prisons pursuant to a sentence of imprisonment for 180 months imposed by the United States District Court for the Eastern District of Virginia. Petitioner currently is housed at FCI-Estill in Estill, South Carolina. Petitioner, proceeding pro se, brought this action pursuant to 28 U.S.C. § 2241 on October 7, 2011, alleging that he is serving an unlawful sentence.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for a Report and Recommendation. The Magistrate Judge reviewed the § 2241 petition pursuant to the provisions of the Anti-Terrorism and Effective Death Penalty Act of 1996 and applicable precedents. The Magistrate Judge issued a Report and Recommendation on December 9, 2011, in which he noted that Petitioner filed a motion to correct sentence pursuant to 28 U.S.C. § 2255 in February 2003, as well as two motions pursuant to 18 U.S.C. § 3582 for a reduction in sentence. Each motion was denied. The Magistrate Judge determined that the relief sought by Petitioner is cognizable only through direct appeal and/or a motion under § 2255. The Magistrate Judge further determined that Petitioner is required to seek leave from the Court of Appeals for the Fourth Circuit before filing a successive § 2255 in order to

properly raise his sentencing claim. Accordingly, the Magistrate Judge recommended that the § 2241 petition be dismissed without prejudice and without issuance and service of process upon Respondent. Petitioner filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The Report and Recommendation is adopted and incorporated herein by reference. Petitioner’s petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 is dismissed without prejudice and without issuance and service of process upon Respondent.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Chief United States District Judge

Columbia, South Carolina
January 9, 2012